IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1056 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUNJAB NATIONAL BANK & 1 - Petitioner(s)
Versus
PUNJAB NATIONAL BANK & 2 - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1, 3,
MR SV RAJU for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2006

ORAL JUDGMENT

1. In the present Special Civil Application so many prayers are made, however, the main relief is to struck down the eligibility clause of Promotion

Policy for Officers 1991 at Annexure – A – 2 years rural service as pre-condition as according to the petitioner it is not found workable and practicable.

2. Shri Chetan Pandya, learned advocate appearing for the respondent – Bank has submitted that the very Promotion Policy laying down the eligibility vide Circular No.1271 dated 21st March, 1991 was subject to consideration by the Hon'ble Supreme Court and in case of ***Chairman & Managing Director, Punjab National Bank and Others V/s. Rajendra Nath Chawla*** reported in **(1996) 7 SCC P.282,** the Hon'ble Supreme Court has upheld the said policy. In the said judgment in paragraphs – 14 and 15 the Hon'ble Supreme Court has observed as under :-

> ***"Para - 14.*** *The High Court found that due to omission of the words " for no fault of theirs", the relaxation of 2 years' service had been granted and, therefore, from the initial date of the expiry of 2 years from the date of refusal, he had become eligible for*

consideration; and the denial thereof violated his right under Article 14 and was invalid in law. It is contended by Shri V. R. Reddy, the learned Additional Solicitor General, that the view expressed by the High Court is not correct. Once an officer refuses to accept promotion, the bar of 2 years starts from the date of refusal and he becomes ineligible for consideration. Thus from the date of refusal, for two years he cannot be considered at all for promotion. But thereafter when he is to be considered for promotion he is further required to have fulfilled the additional promotion criteria, namely, two years' experience of rural branch service. Till that happens he would not be entitled to be considered for promotion. The High Court has assumed that after two years of first rejection of promotion he should be considered for promotion even though he might not have completed two years of experience of rural branch service. Though opportunity was given to the respondent and after promotion he had joined, he himself got it cancelled. Therefore, from the date of cancellation, he became ineligible. He was, by inadvertent mistake, permitted to appear in the examination

and interview but once he did not complete two years from the date of his refusal as mentioned in the narration of the facts or from the date of cancellation, after joining he did not become eligible until two years' period expired. Shri Madhava Reddy, the learned senior counsel contended that the bar of two years would be applicable on his first declining to accept the promotion. Thereafter, on his appearing for selection and on being found selected, he must get the promotion and if he declined to accept thereafter bar of two years would begin to run from that date. That had happened in the first offer of October 1991 and so in 1993, he became eligible. Though persons similarly situated had been promoted, the respondent was denied of the same and, therefore, the High Court was right in its conclusion that the respondent is entitled to the benefit. We find no force in the contention of Shri Madhava Reddy.

Para - 15. *It is seen that on his refusal to accept the promotion or on its cancellation, he became ineligible for 2 years for consideration; the reason being that 2 years' rural/semi-*

urban service was a pre-condition which, though later on made a post-condition, remained to be a mandatory requirement. It was open to an officer, before he appeared in examination and interview not to opt for promotion. On exercise of option he was considered, promoted and was posted to rural service; the officer accepted the promotion and after he joined the M.M.G. Scale-II post, he was required to complete at least two years, if not already completed, or the residue period. If, without completing 2 years, on his own volition, he gets his posting cancelled and reverted to J.M.G. Scale-I and thereafter gets posted in an urban branch, the bar becomes operative and he becomes ineligible for promotion to M.M.G. Scale-II for two years from the date of cancellation. Therefore, the question of putting him in A list or B list does not arise. That would arise only in a case where the officer, for no fault of him, was not given opportunity to serve in rural or semi-urban branch; even though he became qualified after putting in 7 years of satisfactory service, he will then be put in B list and on his selection and promotion as M.M.G. Scale-II, he will be posted to rural/semi-urban branch. On his

completion of 2 years' service or the balance period, he would become fully qualified and secure seniority from the date his immediate junior in List A had joined the post of M.M.G. Scale-II. That facility is inapplicable to an officer who had refused, on his own volition, to accept the promotion and had opted for urban posting. Thus the High Court was wholly wrong in its conclusion that the appellant became qualified in 1993. The view of the High Court that the bar of 2 years is not applicable to him, is clearly incorrect."

3. In view of the decision of the Hon'ble Supreme Court, the present Special Civil Application is required to be dismissed and is accordingly dismissed. Rule is discharged. No costs.

[M.R.SHAH, J.]

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